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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,704	09/26/2003	William Long	09680.0237US01	9253
23552	7590	09/12/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				KISH, JAMES M
			ART UNIT	PAPER NUMBER
			3737	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/671,704	LONG, WILLIAM	
	<b>Examiner</b>	<b>Art Unit</b>	
	James Kish	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/5/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Abreu (US Patent No. 6,544,193). Abreu discloses a device for non-invasively analyzing blood via electromagnetic waves (see Abstract). A coil is used to produce a magnetic field that is progressively increased at a region of interest (column 73, lines 45-55). Figure 85 shows a radiation source that emits a plurality of different wavelengths. There is also a spectrum analyzer/detector for receiving and analyzing spectral information (column 147, lines 50-60). Figure 86 shows a probe with a radiation source transmission fiber at its end and a receiving collector fiber (column 148, lines 22-28). Abreu also discloses that pulse oximeters are used for measuring blood oxygenation (column 6, lines 53-63).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chance et al. (US Patent No. 5,853,370) in view of Lilge et al. (US Patent No. 6,514,277). Chance discloses an optical system for in vivo, non-invasive imaging of tissue change including a spectrophotometer and a processor (See Abstract). The spectrophotometer includes a light source that generates radiation of a particular wavelength, a detector, an analyzer for correlation between received wavelengths and wavelengths sent by the source, and a processor to create an image, the image consisting of an isograph as seen in Figures 5 and 6 (column 3, line 65 through column 4, line 9). The optical system is constructed to introduce and detect photons at two wavelengths (column 4, lines 21-24). In certain embodiments, an optical contrast agent of a drug is introduced to the blood stream of the subject (column 5, lines 59-64). The image set is related to at least one of a group comprising a changing of a magnetic field (column 3, lines 20-33). While Chance discloses an optical system for non-invasive imaging a probe is not used to acquire the data. Lilge teaches a fiber optic multitasking probe used in photodynamic therapy (see Abstract). Sensors receive information from photoactive constituents in a group comprising fluorophore compounds having a

fluorescent emission spectrum and phosphor compounds each having a phosphorescent emission spectrum (column 3, lines 1-10). Phosphorescent lifetime is also measured (column 5, lines 57-60). For use in other light based therapeutics, the fluorophore absorption needs to match the treatment wavelength (column 7, lines 31-50). Therefore, the wavelength would need to be a match for the fluorophore compound, making it obvious to use a different wavelength from the probe wavelength when the situation arose. It would also be obvious for the therapy beam to be more intense than the probe beam to minimize heating effects during probing.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Kish whose telephone number is 571-272-5554. The examiner can normally be reached on 8:30 - 5:00 ~ Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMK



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